

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 16, 2021

Lyle W. Cayce
Clerk

No. 21-50233
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

PRIMITIVO PARRA-ROBLES,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:10-CR-2956-1

Before SOUTHWICK, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Primitivo Parra-Robles appeals the 48-month, above-guidelines sentence of imprisonment imposed following his guilty-plea conviction for illegal reentry after removal from the United States. He contends that his sentence is unconstitutional because his indictment alleged only those facts

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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sufficient for a conviction under 8 U.S.C. § 1326(a) and did not include any allegations of a prior conviction necessary for the § 1326(b)(2) enhancement.

He concedes that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998), but seeks to preserve the issue for further review. The Government agrees and has filed an unopposed motion for summary affirmance, and in the alternative, a motion for an extension of time to file a brief.

The parties are correct that the sole issue is foreclosed by *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007). Thus, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED AS MOOT.